

ATTACHMENT 1

SECTION 222 OF THE COMMUNICATIONS ACT

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

Section 222. Privacy of customer information

(a) In general - Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of carrier information - A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of customer proprietary network information

(1) Privacy requirements for telecommunications carriers - Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) Disclosure on request by customers - A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information - A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefore.

(d) Exceptions - Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents -

(1) to initiate, render, bill, and collect for telecommunications services;

(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service; and

(4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title

(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

(B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(e) Subscriber list information - Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) Authority to use wireless location information - For purposes of subsection (c)(1) of this section, without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to -

(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title), other than in accordance with subsection (d)(4) of this section; or

(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) Subscriber listed and unlisted information for emergency services - Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (i)(3)(A) (1) of this section (including information pertaining to subscribers

whose information is *unlisted or unpublished*) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

(h) Definitions - As used in this section:

(1) Customer proprietary network information - The term "customer proprietary network information" means -

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier- customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

(2) Aggregate information - The term "aggregate customer information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) Subscriber list information - The term "subscriber list information" means any information -

A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) Public safety answering point - The term "public safety answering point" means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) Emergency services - The term "emergency services" means 9-1-1 emergency services and emergency notification services.

(6) Emergency notification services - The term "emergency notification services" means services that notify the public of an emergency.

(7) Emergency support services - The term "emergency support services" means information or data base management services used in support of emergency services.

(June 19, 1934, ch. 652, title II, Sec. 222, as added Pub. L. 104-104, title VII, Sec. 702, Feb. 8, 1996, 110 Stat. 148; amended Pub. L. 106-81, Sec. 5, Oct. 26, 1999, 113 Stat. 1288.)

PRIOR PROVISIONS

A prior section 222, act June 19, 1934, ch. 652, title II, Sec. 222, as added Mar. 6, 1943, ch. 10, Sec. 1, 57 Stat. 5; amended July 12, 1960, Pub. L. 86-624, Sec. 36, 74 Stat. 421; Nov. 30, 1974, Pub. L. 93-506, Sec. 2, 88 Stat. 1577; Dec. 24, 1980, Pub. L. 96-590, 94 Stat. 3414; Dec. 29, 1981, Pub. L. 97-130, Sec. 2, 95

Stat. 1687, related to competition among record carriers, prior to repeal by Pub. L. 103-414, title III, Sec. 304(a)(6), Oct. 25, 1994, 108 Stat. 4297.

AMENDMENTS

1999 - Subsec. (d)(4). Pub. L. 106-81, Sec. 5(1), added par. (4). Subsecs. (f), (g). Pub. L. 106-81, Sec. 5(2), added subsecs. (f) and (g). Former subsec. (f) redesignated (h). Subsec. (h). Pub. L. 106-81, Sec. 5(2)-(4), redesignated subsec. (f) as (h), inserted "location," after "destination," in par. (1)(A), and added pars. (4) to (7).

-FOOTNOTE-

(1) So in original. Probably should be subsection "(h)(3)(A)".

ATTACHMENT 2

FCC CPNI RULES

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR64.2001]

[Page 319]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2001 Basis and purpose.

Source: 63 FR 20338, Apr. 24, 1998, unless otherwise noted.

(a) Basis. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of the rules in this subpart is to implement section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR64.2003]

[Page 319-320]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2003 Definitions.

Terms in this subpart have the following meanings:

(a) Affiliate. The term ``affiliate'' has the same meaning given such term in section 3(1) of the Communications Act of 1934, as amended, 47 U.S.C. 153(1).

(b) Communications-related services. The term ``communications-related services'' means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(c) Customer. A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(d) Customer proprietary network information (CPNI). The term ``customer proprietary network information (CPNI)'' has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).

(e) Customer premises equipment (CPE). The term ``customer premises equipment (CPE)'' has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, 47 U.S.C. 153(14).

(f) Information services typically provided by telecommunications carriers. The phrase ``information services typically provided by telecommunications carriers'' means only those information

[[Page 320]]

services (as defined in section 3(20) of the Communications Act of 1934, as amended, 47 U.S.C. 153(2)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase ``information services typically provided by telecommunications carriers,' as used in this subpart, shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(g) Local exchange carrier (LEC). The term ``local exchange carrier (LEC)'' has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. 153(26).

(h) Opt-in approval. The term ``opt-in approval'' refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided

appropriate notification of the carrier's request consistent with the requirements set forth in this subpart.

(i) Opt-out approval. The term ``opt-out approval'' refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in Sec. 64.2009(d)(1) after the customer is provided appropriate notification of the carrier's request for consent consistent with the rules in this subpart.

(j) Subscriber list information (SLI). The term ``subscriber list information (SLI)'' has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(3).

(k) Telecommunications carrier or carrier. The terms ``telecommunications carrier'' or ``carrier'' shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44).

(l) Telecommunications service. The term ``telecommunications service'' has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, 47 U.S.C. 153(46).

[67 FR 59211, Sept. 20, 2002]

[Code of Federal Regulations]

[Title 47, Volume 3]

[Revised as of October 1, 2005]

From the U.S. Government Printing Office via GPO Access

[CITE: 47CFR64.2005]

[Page 320-321]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (i.e., local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval.

(1) If a telecommunications carrier provides different categories of service, and a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in Sec. 64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval

[[Page 321]]

services, fax store and forward, and protocol conversion.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

(d) A telecommunications carrier may use, disclose, or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

[63 FR 20338, Apr. 24, 1998, as amended at 64 FR 53264, Oct. 1, 1999; 67 FR 59211, Sept. 20, 2002]

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR64.2007]

[Page 321-322]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2007 Approval required for use of customer proprietary network information.

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(1) A telecommunications carrier relying on oral approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

(b) Use of Opt-Out and Opt-In Approval Processes. (1) A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (b) (2) of this section.

(2) Joint Venture/Contractor Safeguards. A telecommunications carrier that discloses or provides access to CPNI to its joint venture partners or independent contractors shall enter into confidentiality agreements with independent contractors or joint venture partners that comply with the following requirements. The confidentiality agreement shall:

(i) Require that the independent contractor or joint venture partner use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;

(ii) Disallow the independent contractor or joint venture partner from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and

(iii) Require that the independent contractor or joint venture partner have appropriate protections in place

[[Page 322]]

to ensure the ongoing confidentiality of consumers' CPNI.

(3) Except for use and disclosure of CPNI that is permitted without customer approval under section Sec. 64.2005, or that is described in paragraph (b)(1) of this section, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

[67 FR 59212, Sept. 20, 2002]

Effective Date Note: At 67 FR 59212, Sept. 20, 2002, Sec. 64.2007 was revised. This section contains information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR64.2008]

[Page 322-323]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2008 Notice required for use of customer proprietary network information.

(a) Notification, Generally. (1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any

person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) Notice Requirements Specific to Opt-Out. A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to

[[Page 323]]

opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice;

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) Notice Requirements Specific to Opt-In. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(f) Notice Requirements Specific to One-Time Use of CPNI. (1) Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval

based on the nature of the contact.

(2) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and

(iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

[67 FR 59212, Sept. 20, 2002]

Effective Date Note: At 67 FR 59212, Sept. 20, 2002, Sec. 64.2008 was added. This section contains information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.

[Code of Federal Regulations]
[Title 47, Volume 3]
[Revised as of October 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR64.2009]

[Page 323-324]

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 64 MISCELLANEOUS RULES RELATING TO COMMON CARRIERS--Table of Contents

Subpart U Customer Proprietary Network Information

Sec. 64.2009 Safeguards required for use of customer proprietary network information.

(a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval

[[Page 324]]

can be clearly established prior to the use of CPNI.

(b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.

(c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart.

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to

customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

[63 FR 20338, Apr. 24, 1998, as amended at 64 FR 53264, Oct. 1, 1999; 67 FR 59213, Sept. 20, 2002]

Effective Date Note: At 67 FR 59213, Sept. 20, 2002, Sec. 64.2009 was amended by revising paragraphs (c) and (d) and by adding paragraph (f). These paragraphs contain information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.

Appendix B

Final Rules

Subpart U of Part 64, of Title 47 of the Code of Federal Regulations is amended to read as follows:

SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

1. Section 64.2003(k) is amended to read as follows:

(k) *Telecommunications carrier or carrier.* The terms “telecommunications carrier” or “carrier” shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44). For the purposes of this subpart, the term “telecommunications carrier” or “carrier” shall include an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

2. Section 64.2003 is amended by redesignating paragraphs (a)-(l) and by adding the following paragraphs:

- (a) *Account information.* “Account information” is information that is specifically connected to the customer’s service relationship with the carrier, including such things as an account number or any component thereof, the telephone number associated with the account, or the bill’s amount.
- (b) *Address of record.* An “address of record,” whether postal or electronic, is an address that the carrier has associated with the customer’s account for at least 30 days.
- (d) *Call detail information.* Any information that pertains to the transmission of specific telephone calls, including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.
- (m) *Readily available biographical information.* “Readily available biographical information” is information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.
- (q) *Telephone number of record.* The telephone number associated with the underlying service, not the telephone number supplied as a customer’s “contact information.”
- (r) *Valid photo ID.* A “valid photo ID” is a government-issued means of personal identification with a photograph such as a driver’s license, passport, or comparable ID that is not expired.

3. Section 64.2005(c)(3) is amended to read as follows:

(3) LECs, CMRS providers, and entities that provide interconnected VoIP service as that term is defined in section 9.3 of these rules, may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

4. Section 64.2007 is amended by deleting paragraphs (b)(2) and (b)(3), and revising paragraph (b)(1) to read as follows:
 - (b) *Use of Opt-Out and Opt-In Approval Processes.* A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents and its affiliates that provide communications-related services. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Except for use and disclosure of CPNI that is permitted without customer approval under section § 64.2005, or that is described in this paragraph, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.
5. Section 64.2009 is amended by revising paragraph (e) to read as follows:
 - (e) A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year.
6. Section 64.2010 is added to read as follows:

§ 64.2010 Safeguards on the disclosure of customer proprietary network information

- (a) *Safeguarding CPNI.* Telecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI. Telecommunications carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit.
- (b) *Telephone access to CPNI.* Telecommunications carriers may only disclose call detail information over the telephone, based on customer-initiated telephone contact, if the customer first provides the carrier with a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information. If the customer does not provide a password, the telecommunications carrier may only disclose call detail information by sending it to the customer's address of record, or, by calling the customer at the telephone number of record. If the customer is able to provide call detail information to the telecommunications carrier during a customer-initiated call without the telecommunications carrier's assistance, then the telecommunications carrier is permitted to discuss the call detail information provided by the customer.

- (c) *Online access to CPNI.* A telecommunications carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecommunications service account. Once authenticated, the customer may only obtain online access to CPNI related to a telecommunications service account through a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information.
- (d) *In-store access to CPNI.* A telecommunications carrier may disclose CPNI to a customer who, at a carrier's retail location, first presents to the telecommunications carrier or its agent a valid photo ID matching the customer's account information.
- (e) *Establishment of a Password and Back-up Authentication Methods for Lost or Forgotten Passwords.* To establish a password, a telecommunications carrier must authenticate the customer without the use of readily available biographical information, or account information. Telecommunications carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer must establish a new password as described in this paragraph.
- (f) *Notification of account changes.* Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.
- (g) *Business Customer Exemption.* Telecommunications carriers may bind themselves contractually to authentication regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

7. Section 64.2011 is added to read as follows:

§ 64.2011 Notification of customer proprietary network information security breaches

- (a) A telecommunications carrier shall notify law enforcement of a breach of its customers' CPNI as provided in this section. The carrier shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement pursuant to paragraph (b).
- (b) As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the telecommunications carrier shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

- (1) Notwithstanding any state law to the contrary, the carrier shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in paragraphs (2) and (3).
 - (2) If the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (1), in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The carrier shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.
 - (3) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by carriers.
- (c) *Customer Notification.* After a telecommunications carrier has completed the process of notifying law enforcement pursuant to paragraph (b), it shall notify its customers of a breach of those customers' CPNI.
- (d) *Recordkeeping.* All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to paragraph (b), and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.
- (e) *Definitions.* As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.
- (f) This section does not supersede any statute, regulation, order, or interpretation in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

ATTACHMENT 3

**SCRIPT AND FORM FOR
ORAL INBOUND MARKETING CPNI NOTICE**

This Notice must be used to obtain a customer's oral approval for use of his or her CPNI for the duration of a single incoming call from the customer to inquire about or order new or additional services outside of his or her existing category or package of services.

ORAL INBOUND MARKETING CPNI NOTICE

It is possible that I can better assist you on this call if I can access and use certain of your existing account records known as CPNI. However, before I can do so, federal law requires me to read you a notice and give you the option of approving or disapproving my use of your records during this call. May I read you the Notice?

If "no," proceed to assist the customer without using his or her CPNI.

If "yes," proceed to read the Notice:

CPNI (which stands for Customer Proprietary Network Information) consists of the call, service and billing records regarding your use of the telecommunications services that you purchase from us (e.g., the telephone numbers you call; the frequency, timing and duration of your calls; and the telecommunications and information services you purchase).

You have a right to the confidentiality of your CPNI, and the Company has a duty, under federal law, to protect that confidentiality. You have a right to approve or disapprove my use of your CPNI to assist you on this call.

If you approve, I may be better able to assist you during this call. Your approval will be limited to this call.

If you disapprove, I will continue to assist you to the best of my ability, but I will not be able to access or use your CPNI records during this call.

Would you like to approve or disapprove?

If the customer approves, complete this form and deliver it to the CPNI Compliance Officer as soon as possible.

The named customer approved the use of CPNI during a call on the specified date.

Customer Name _____ Telephone Number _____

Company Representative _____ Date _____

OPT-OUT CPNI NOTICE

This Notice must be used to obtain customer approval to use CPNI for out-bound marketing campaigns, and to provide or share CPNI with affiliates that provide communications-related services.

The Notice may be sent to customers in a variety of ways, including by separate mail, as a bill insert, by facsimile, or by email. The attached model Notice assumes that it will be sent by mail or as a bill insert.

Customers must be allowed to disapprove by a method or variety of methods that impose no additional cost upon the customer and that are available 24 hours a day. The attached model Notice assumes that disapprovals will be made by mail, facsimile or telephone call.

Because no response by a customer to an Opt-Out Notice within 33 days after it is sent is deemed to constitute the customer's approval of the proposed CPNI use, the FCC requires the company to take substantial measures to ensure that Opt-Out Notices are received, read and understood by customers.

The Notice must be comprehensible to the ordinary customer, and must not be misleading. It must be clearly legible, use sufficiently large type, and be delivered in a manner so as to be readily apparent to the customer. If any portion of the Notice is translated into another language, the entire Notice must be translated into that language.

If email is used to deliver an Opt-Out Notice, there are substantial additional requirements and precautions, including: (a) customers must give their express prior approval for CPNI notices to be sent to them via email; (b) customers must be allowed to reply directly to the email to disapprove the proposed CPNI use; (c) email notices returned as undeliverable must be sent by an alternative means (and the 33-day clock reset); and (d) the subject line of the email must clearly and accurately identify its purpose.

The Notice must specify the entities that will receive the CPNI and the purpose(s) for which it will be used.

Some examples of the proposed use to be inserted in the third paragraph:

The Company is requesting your approval to

... use your CPNI to develop and market new video services for you.

... allow its long distance affiliate XYZ Company to access and use your CPNI to design and develop new toll services and packages for you.